Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1617

STATE OF OKLAHOMA ex rel. DEPARTMENT OF TRANSPORTATION OF THE STATE OF OKLAHOMA,
Petitioner,

VERSUS

MRS. C. V. PILE,
Respondent.

RESPONDENT'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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Dated: May 1, 1980

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NO. 79-1617

STATE OF OKLAHOMA ex rel DEPARTMENT OF TRANSPORTATION OF THE STATE OF OKLAHOMA, Petitioner

v.

MRS. C.V. PILE, Respondent

RESPONDENT'S RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Mrs. C.V. Pile, respondent herein, prays that Petitioners Petition for a Writ of Certiorari be denied.

OPINION BELOW

State ex rel. Department of Transportation vs. Pile, 603 P. 2d 337 (Okl., 1979).

STATEMENT OF CASE

Mrs. Pile's demurrer below asserted that her "noncommerical" billboard message was not covered by the state statute because if it were, the statute would be unconstitutional under the First and Fourteenth Amendments to the United States Constitution and Article II Section 22 of the Constitution of the State of Oklahoma.

QUESTION PRESENTED

The primary question for consideration is whether or not the Oklahoma Outdoor Advertising Control Act (69 O.S. § 1271-1285) violates the Constitution of the United States if applied to Mrs. Pile's "non-commercial" billboard.

ARGUMENT FOR DENYING PETITION FOR A WRIT OF CERTIORARI

I.

Petitioner invokes jurisdiction of the Supreme Court under 28 U.S.C.§1257(3).

However, respondent argued below and the Oklahoma Supreme Court ruled that the state statute did not apply to respondent's sign since it would have violated

both the Constitution of the State of Oklahoma and the Constitution of the United States if it did so apply.

The Supreme Court of the State of Oklahoma's decision that the Act would be unconstitutional under the Oklahoma Constitution if it were applied to the respondent's sign is conclusive as to that question and cannot be reviewed by the Supreme Court of the United States. Chesapeake & O.R. Co. vs. Public Service Com., 224 U.S. 603, LEd 520, 37 S Ct 234 (1917).

The only federal question therefore, to be reviewed by the Supreme Court of the United States is whether or not the Oklahoma Act would be invalid under the Constitution of the United States if applied to respondent's sign. And this question would no longer effect the rights of the parties herein. Even if the Supreme Court of the United States were to decide that the Oklahoma Act was valid under the Constitution of the United States if applied to respondent's sign, respondent's sign would still be protected under the Oklahoma Constitution pursuant

to the decision below by the Oklahoma Supreme Court which is controlling on the United States Supreme Court with regard to that question.

Thus, for the Supreme Court of the United States to decide the federal question would not effect the rights of the litigants and would be merely an advisory opinion. Federal Courts are without power to give advisory opinions which cannot effect the rights of the litigants in the case before it. St. Pierre v. United States (1943) 319 US 41, 87 L Ed 1199, 63 S Ct 910.

Wherefore, the Petition for a Writ of Certiorari should be denied.

II.

Petitioner argues as a reason for granting the Writ of Certiorari that the Oklahoma Supreme Court erred as a matter of law and decided in a way not in accord with applicable decisions of the United States Supreme Court.

This allegation by petitioner is without grounds. In deciding that applying the Oklahoma Act to the respondent's sign would raise serious

doubts as to its constitutionality, that the Court should interpret the Act in order to avoid constitutional doubt, and that, therefore, the Act did not apply to respondent's sign, the Oklahoma Supreme Court cited twenty-four (24) decisions of the United States Supreme Court including those decisions which petitioner argues are applicable to the issue herein.

A. Petitioner argues that the Oklahoma Supreme Court definition of advertising as commercial advertising is contrary to the statutory definition and to case law. Petitioner is incorrect.

The case law in the United States is overwhelmingly to apply general laws regulating signboards, including laws very similiar to Oklahoma's and enacted pursuant to the same federal statute, to commercial signs only. Wildman Arms, Inc. of Swarthmore v. Zoning Hearing Board, Pennsylvania Commonwealth, 328 A.2d 528 (1974); E.B. Elliott Advertising Co. v. Metropolitan Dade County, 294 F.Supp. 412 (S.D. Fla. 1968), Affd., 425 F.2d 1141 (5th Cir 1970); Micalite Sign Corp. v.

State Highway Department, 236 A.2d 680 (Vt. 1967); Ghaster Properties, Inc. v. Preston, 200 N.E.2d 328 (Ohio 1964); Peltz v. City of South Euclid, 228 N.E. 2d 320, 324 (Ohio 1967); Burk v. Municipal Court of Whittier Judicial District, 40 Cal.Rptr. 425, 229 C.A.2d 696 (1964); In re Opinion of the Justices, 169 A.2d 762 (N.H. 1961).

There are scores of cases in 72 A.L.R. 465; 156 A.L.R. 581; 58 A.L.R.2d 1314 and all of the supplements thereto dealing with statutes concerning municipal and governmental power as to billboards and outdoor advertising. None of them concerned anything but commercial advertising.

Petitioner has cited only one case which has applied general laws regulating signboards to non-commercial signs.

B. Petitioner claims that the Oklahoma Supreme Court cited no cases in support of its conclusion that the highway is an appropriate public forum for free speech. Petitioner is again incorrect. The Oklahoma Supreme Court discussed in length free speech activity in a public forum, citing at least eight decisions

of the United States Supreme Court to support its conclusion. (603 P.2d 340-341).

Petitioner cites Justice Douglas in Lehman, supra., at 306 to the effect that a highway is not a meeting place for discussion. First of all, Justice Douglas' statement was dicta and neither the plurality or minority decision in the case ruled that the transit vehicles involved therein could not be a public forum for free speech. Furthermore, the fact that Justice Douglas stated that certain places are not meeting places for discussion does not mean that they are not public forums for free speech. The question is not whether or not personal discussion may be had, but whether or not one has the right to disseminate information and the right to receive it. Erznoznik v. City of Jacksonville, 422 U.S. 205, 209, 95 S.Ct. 2268, 2272, 45 L.Ed.2d 125 (1975); and see citations at 603 P.2d 339, n.1.

C. Petitioner argues that the Oklahoma Supreme Court decision ignored the case law concerning the state's police

power to regulate billboards for reasons of safety and aesthetics.

Again, the Petitioner is incorrect. The Oklahoma Supreme Court discussed fully the safety and aesthetic arguments made in the cases cited by Petitioner and found them to be insufficient under Thomas v. Collins, 323 U.S. 516, at 530, 65 S.Ct. 315, 89 L.Ed. 430 (1945); Bates vs. City of Little Rock, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480 (1960); (603 P.2d 342-343); and Lovell v. Griffin, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949 (1938).

Petitioner's citation to Berman v. Parker, 348 U.S. 26, 75 S.Ct. 84, 99 L. Ed. 27 (1954) is inappropriate since said case itself admits that the exercise of police power is "subject to specific constitutional limitations." Id. at 32.

The greatest constitutional limitation on the exercise of the police power is free speech under the First Amendment to the Constitution of the United States which is why any system of prior restraints of expression comes before a court bearing a heavy presumption against its constitutional validity. See the

eight (8) decisions of the Supreme Court of the United States cited by the Supreme Court of Oklahoma (603 P.2d 340).

The Supreme Court of Oklahoma was bound to accept an interpretation that avoided constitutional doubt as to the validity of the statute involved. U.S. v. Harris, 347 U.S. 612, 74 S.Ct. 808, 98 L.Ed. 989 (1954). The Supreme Court of Oklahoma has held respondent's non-commercial speech not to be regulated by the pertinent statute and has avoided the danger of unconstitutionality under the applicable case law of Oklahoma and the Supreme Court of the United States.

Therefore, the Petition for a Writ of Certiorari should be denied.

CONCLUSION

Wherefore, for the foregoing reasons and authorities, Petitioner's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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